



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 15, 1997

Mr. John Lawhon  
General Counsel  
Texas Woman's University  
P.O. Box 425497  
Denton, Texas 76204-5497

OR97-0082

Dear Mr. Lawhon:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103161.

Texas Woman's University (the "university") received a request for a former employee's personnel records. You assert that the requested information is excepted from required public disclosure based on Government Code section 552.103. Section 552.103(a) of the Government Code reads as follows:

(A) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong

showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5.

You state "[i]t is the opinion of the General Counsel at Texas Woman's University and of the Assistant Attorney General . . . representing the University that litigation against the University by the former employee is reasonably anticipated and that the material requested is related to litigation, thus excepting the records in this request from disclosure." You have provided no information to explain why the university's General Counsel and the Assistant Attorney General hold the opinion that litigation is reasonably anticipated. Furthermore, you have failed to supply this office with concrete evidence that litigation may ensue. Consequently, we cannot conclude that litigation is reasonably anticipated in this instance. Moreover, we lack the necessary information to assess the relatedness of the requested information to the litigation.

However, the records contain some information that is confidential by law. Section 552.101 of the Government Code excepts from public disclosure information that is confidential by law. Consequently, the university must withhold the information we have marked as deemed confidential by law, which includes information made confidential under the common-law right to privacy, see Open Records Decision No. 600 (1992), and the Medical Practice Act, V.T.C.S. article 4495b, section 5.08.

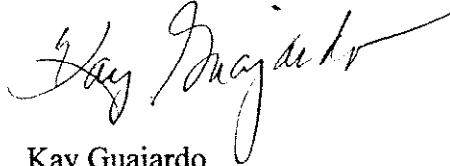
The records also contain information that may be excepted from disclosure by Government Code section 552.117. Section 552.117 excepts from disclosure the home address, home telephone number and social security number of a current or former government official or employee, as well as information that reveals whether a current or former government official or employee has family members. The exception only applies if at the time the university received the request the official or employee had chosen to keep such information confidential in accordance with section 552.024 of the Government Code. We have marked samples of information that section 552.117 may cover.<sup>1</sup>

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<sup>1</sup>The social security numbers may be confidential under the federal Social Security Act, 42 U.S.C. § 405(c)(C)(viii)(I), if they were obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo".

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 103161

Enclosures: Marked documents

cc: Mr. Deon Daugherty  
Managing Editor  
The Lasso  
Texas Woman's University  
Denton, Texas 76204  
(w/o enclosures)